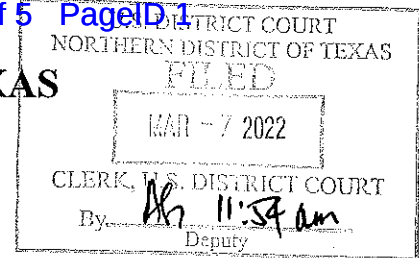


**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS**



Benita D. Nesby  
Plaintiff

**4-22CV-167-P**

v.

Civil Action No.

All Commercial Floors.  
Defendant

**COMPLAINT**

On January 4<sup>th</sup>, 2022, I was laid off from All Commercial Floors, by Jeff Merritt who is the Receiver. That week, they had already told me CF was the HR Director they had to postpone payroll which was 1/5/22. On 1/10/22 they processed payroll however, they only paid active employees. Anyone who was laid off or resigned from 12/16 - 1/4 was not paid. I was told that I would be paid but that he (Mr. Merritt) did not know when.

I filed a wage claim with TWC & they have found that I am due \$7,791.67. I am due these wages & simply want to be paid what I am due.

\* Attach additional pages as needed.

Attached is the findings from Texas Workforce Commission

Date

3/7/2022

Signature

Benita D. Nesby

Print Name

Benita D. Nesby

Address

2209 Lockesley Drive

City, State, Zip

Flower Mound TX 75028

Telephone

972-800-5985

CLAIMANT COPY  
Texas Workforce Commission  
Labor Law Dept. Room 124T  
101 East 15th Street  
Austin, Tx 78778-0001

Case 4:22-cv-00167-P Document 1 Filed 03/07/22 Page 2 of 5 PageID 2

## TEXAS WORKFORCE COMMISSION

### PRELIMINARY WAGE DETERMINATION ORDER

Labor Law

February 28, 2022

320405610000120103



PAGE 1 OF 2 PAGES

BENITA D NESBY  
2209 LOCKESLEY DR  
FLOWER MOUND TX 75028

Determination Number: 000592672  
Wage Claim Number: 22 050296-1  
Identification Number: XXX-XX-XXXX

ALL COMMERCIAL FLOORS, INC.

An investigation having been completed, the following order is entered pursuant to Chapter 61 of the Texas Labor Code:

#### FINDINGS AND CONCLUSIONS

Our investigation has determined that the claimant is entitled to \$7,791.67 for unpaid wages. Convincing evidence of employment has been provided for all or part of the period claimed.

The claimant is not entitled to \$219.87 for unpaid bonuses. The Texas Payday Law provides that bonuses are due for payment according to the terms of the bonus agreement. The employer's bonus agreement provides that bonuses will be provided on a discretionary basis. Therefore, the employer is not obligated to provide the bonus amount.

It has been determined that the employer violated the provisions of the Texas Payday Law when the claimant's earned wages were not paid in accordance with the law. If it is determined that an employer has acted in bad faith, the Commission may assess an administrative penalty for failure to pay wages as required by law. In this case no penalty is assessed.

The employer named in your wage claim, All Commercial Floors, Inc. has been placed in temporary receivership according to case number 4:21-cv-01154-0 filed on 10/22/21 in the Room 310 District Court of the Northern District of Texas Fort Worth Division County. Therefore, this agency is unable to assist in the collection of wages. Pursuant to the Court's order, all claims against this employer must be filed with the District Court and/or with the court appointed Temporary Receiver, Jeff C. Merritt 101 S. Coit Road, Suite 36-306 Richardson, TX 75080 or by calling, Jeff C. Merritt at (214) 226-0794.

Continued on Next Page

(SEE REVERSE SIDE FOR ADDITIONAL INFORMATION)

CLAIMANT COPY  
Texas Workforce Commission  
Labor Law Dept. Room 124T  
101 East 15th Street  
Austin, Tx 78778-0001

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## TEXAS WORKFORCE COMMISSION

### PRELIMINARY WAGE DETERMINATION ORDER

Labor Law  
February 28, 2022

320405610000120203

PAGE 2 OF 2 PAGES

BENITA D NESBY  
2209 LOCKESLEY DR  
FLOWER MOUND TX 75028

Determination Number: 000592672  
Wage Claim Number: 22 050296-1  
Identification Number: XXX-XX-XXXX

#### ORDER

The employer,  
ALL COMMERCIAL FLOORS, INC.

is ORDERED to pay \$7,791.67 for the use and benefit of the claimant,  
BENITA D NESBY, and shall remit the gross or net  
amount disbursement payable to the Texas Workforce Commission.

In addition, being found in violation of Chapter 61 of the Texas Labor Code,  
the employer is assessed an administrative penalty in the amount of \$0.00  
which is to be remitted to the Texas Workforce Commission.

Assigned Representative: OLSON

TEXAS WORKFORCE COMMISSION  
 Labor Law-Bank Notice Unit  
 101 East 15th Street  
 Austin, Texas 78778-0001  
 1 800 832-9243 (Texas Only)  
 1 512 475-2670 (Out-of-State)

320405610000120303



BENITA D NESBY  
 2209 LOCKESLEY DR  
 FLOWER MOUND TX 75028

Date: February 28, 2022  
 Wage Claim No.: 22 050296-1  
 Employer Name: ALL COMMERCIAL FLOOR  
 Employer No.: 08 167105-2

Dear Claimant,

The Texas Payday Law allows for the issuance of a Notice of Delinquency/Freeze and Notice of Levy as a means of collection on your behalf. When an employer is delinquent in payment of wages, this process allows the Texas Workforce Commission to notify your employer's financial institution(s), other businesses or governmental entities from whom this employer potentially receives income. These notices freeze the account(s) or income funds and require the institution or other entity, on demand by the Texas Workforce Commission, to pay funds from the account or account receivables to settle the payment of wages.

Please provide, in the spaces below, the name(s) and address(es) of any financial institution(s) in which the **employer** may have an account. Also, if you know of any business(es) or government agency(ies) from whom the employer may possibly receive income (e.g. vendors, suppliers, contractors, clients, or customers for whom services were rendered), please list them. If available, it would be helpful if you could provide a copy of the employer's check.

This information is needed to assist us in the collection of wages for you. Please reply **within 15 days** from the date of this request by mailing this completed form to the above address. If you have questions you may call the number shown above. Telecommunication device for the deaf(TDD) users can communicate with TWC by using Relay Texas. Those numbers are: 1 800-735-2989 (TDD) or 1 800-735-2988 (VOICE).

If your address or phone number changes, it is your responsibility to notify Labor Law immediately. If you cannot be contacted, the likelihood of receiving unpaid wages will be reduced. **IF YOU DO NOT HAVE ANY ADDITIONAL INFORMATION IT IS NOT NECESSARY TO RETURN THIS FORM OR CONTACT US.**

Bank/Business _____	Bank/Business _____
Address _____	Address _____
City _____	City _____
Phone _____	Phone _____
Bank/Business _____	Bank/Business _____
Address _____	Address _____
City _____	City _____
Phone _____	Phone _____

Comments \_\_\_\_\_

**IF ADDITIONAL SPACE IS NEEDED, USE THE BACK OF THIS FORM**

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

## I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff Denton  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

## DEFENDANTS

County of Residence of First Listed Defendant  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☐ 3 Federal Question (U.S. Government Not a Party)  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☒ 1 ☐ 1 PTF DEF Incorporated or Principal Place of Business In This State ☐ 4 ☒ 4  
Citizen of Another State ☐ 2 ☐ 2 Incorporated and Principal Place of Business In Another State ☐ 5 ☐ 5  
Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input checked="" type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement		<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

## V. ORIGIN (Place an "X" in One Box Only)

- ☒ Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

TWC - WAGE CLAIM - Texas Payday LAW.

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

## FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE